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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92066968
Party	Plaintiff Software Freedom Law Center
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Attachments	Motion 56d.pdf(131443 bytes) Declaration.pdf(2069940 bytes) EXHIBITS.pdf(745293 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 4,212,971

For the mark: SOFTWARE FREEDOM CONSERVANCY

Registered: September 25, 2012

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Software Freedom Law Center, Inc.,

Petitioner,

v.

Software Freedom Conservancy, Inc.,

Registrant.

Cancellation No. 92066968

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**PETITIONER’S MOTION UNDER FED. R. CIV.P. 56 (d) FOR DISCOVERY AND TO
DEFER CONSIDERATION OF REGISTRANT’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Trademark and Trial Board manual of Procedure (“TBMP”) § 528.06 and Federal Rule of Civil Procedure 56(d), Petitioner, Software Freedom Law Center (hereinafter “Petitioner” or “SFLC”), by and through its undersigned counsel, hereby respectfully moves the Board: (i) to defer ruling on Registrant’s Motion for Summary Judgment and (ii) to provide SFLC the opportunity to take discovery under Fed. R. Civ. P. 56(d) on issues relevant to its claims for cancellation of Reg. No. 4212971 in order to effectively oppose, Registrant, Software Freedom Conservancy’s (hereinafter “Registrant” or “SFC”) Motion for Summary Judgment, filed on August 24, 2018 [Record Entry 20]. SFLC files this

motion in lieu of a substantive response to SFC's Motion for Summary Judgment¹. SFLC 's motion is supported by the declaration of Mishi Choudhary. In support of this Motion, Petitioner states as follows:

**BRIEF IN SUPPORT OF MOTION UNDER FED. R. CIV. P. 56(d) FOR DISCOVERY AND TO
DEFER CONSIDERATION OF REGISTRANT'S MOTION**

INTRODUCTION

After stalling discovery with inadequate responses and frivolous objections presented without grounds, with almost all of Petitioner's requests outstanding, and without any key party depositions or interrogatories, Registrant prematurely filed its Summary Judgment Motion (hereinafter "Motion") on August 24, 2018 acting unilaterally in an effort to thwart Petitioner from developing its record for the Board to consider. Registrant's Motion for Summary Judgment is nothing more than an attempt to prevent Petitioner from conducting pretrial discovery, as directed by the Board in its order of April 26, 2018, into its claims of actual confusion and fraud. Despite several attempts, Petitioner has received nothing more than a CD containing four (4) PDF files containing a total of one-thousand-four-hundred-nineteen (1,419) pages of documents and a privilege log containing twenty-two (22) entries. Registrant did not produce any documents in response to Document Request No.s 1, 2, 3, 8, 11,14,16,19,21-24, 27-36, and 38-48. One-third of the response sent was a single email chain. Registrant provided these few email messages reformatted to take up 460 pages of a PDF file, with the majority of those pages containing (other than the automatically generated header and footer), no more than a single line of text on each page, making it impossible to use.

¹ SFLC intends to oppose vigorously the Summary Judgment Motion. SFLC's Opposition is presently due September 24, 2018. In the interest of justice and fairness, SFLC has good cause and respectfully requests, for the reasons set forth herein, a continuance beyond that date.

It is apparent that SFC's Motion was strategically filed to prevent Petitioner from conducting meaningful discovery. The purpose of Rule 56(d) of the Federal Rules of Civil Procedure is to prevent this this situation, the obstruction of discovery by the filing of a premature motion for summary judgment. Accordingly, for the reasons set forth herein, Petitioner respectfully requests that the Board deny or defer consideration of Registrant's Motion and enforce Petitioner's right to conduct discovery. In particular, Petitioner requests that the Board require compliance with its outstanding document requests, allow Petitioner (1) to conduct written discovery on the specific topics identified below and (2) to take the depositions of Bradley Kuhn, the President and Distinguished Technologist at the Registrant; Karen Sandler, Executive Director of the Registrant, Anthony K. Sebro Jr. the Signatory of SFC's registration application, and Pamela Chestek, on the matters listed below. Petitioner specifically requests that it be permitted to seek discovery via Interrogatories, Document Requests, Depositions and Requests for Admission to obtain:

1. Evidence of actual confusion by outside third-parties including any correspondence and transactions of specific individuals or parties that confused Petitioner with the Registrant in order to receive legal services from the Registrant that it could not legally provide;
2. Evidence of communications directed to, transmitted to, addressed to, or intended for the Petitioner, Eben Moglen or Mishi Choudhary, but received by the Registrant;
3. Evidence of instances in which Registrant noted or objected to any third-party use or registration of a name or mark believed by Registrant to be confusingly similar to or infringing on Registrant's Mark;
4. Evidence of comparisons between Registrant and any of its products or services and Petitioner and any of its products or services including between or among SFC employees;
5. Evidence of communications received by the Registrant that were meant for the Petitioner;

6. Evidence to identify the persons who participated in, or have knowledge about, the decision to file the application with the USPTO to register the SFC Mark;
7. Evidence that discusses Registrant's decision to file the application with the USPTO to register the SFC Mark;
8. Evidence that the registrant had the exclusive right to use the SFC mark as of any date prior to the date Registrant filed its application for the SFC Mark;
9. Evidence related to provision of legal services by the Registrant;
10. SFC having admitted in its Answer that Anthony K. Sebro made false statements on the Registrant's Application, evidence that Anthony K. Sebro made those false statements as Registrant asserts, on his own personal behalf, rather than on the behalf of Registrant; and
11. Evidence of communications among and between Kuhn, Sandler, and Sebro, devising, planning, facilitating and executing a scheme of fraud including but not limited to false and fraudulent representations to the USPTO, for the purpose of obtaining a trademark to which they knew they were not entitled.

FACTUAL BACKGROUND

Petitioner commenced this proceeding by filing a Petition to Cancel on September 22, 2017. Petitioner filed a Motion for leave to amend its Petition for Cancellation as to Registration 4,212,971 to plead a second ground for cancellation based on fraud, and to toll the time to respond to the Motion for Summary Judgment filed by Software Freedom Conservancy, Inc. ("Registrant") on December 11, 2017. The Motion for leave to amend was decided by the Board on April 26, 2018 wherein the Board held that the "Respondent retains the option to replead the fraud claim if a sound basis for the claim is discovered during discovery". Petitioner served its First (and only) Document Request on Registrant on April 30, 2018. See **Exhibit A**. Petitioner's First Document Request contains forty-eight (48) requests

for documents pertaining to the registrability of the trademark in dispute. On May 30, 2018, Registrant served Responses to Petitioner's First Set of Request for Documents and Things ("Responses") on Petitioner. See **Exhibit B**. Registrant's Responses made numerous objections on the grounds that the requests were "not relevant to the subject matter of the suit," "overly broad" and/or "overly burdensome" without providing specific reasons for these objections, as required by the Federal Rules. Registrant also made numerous objections that Petitioner's requests sought documents that were "privileged," "not relevant," or "privileged or not relevant." Registrant then follows many of these objections with the promise that "Registrant will produce relevant, non-privileged documents that are responsive to this request on a rolling basis as they become available." Registrant also does not ever indicate, in any of its objections, if it has responsive materials that it is withholding. Finding Registrant's Responses utterly useless in determining what specific reasons Registrant had for any of its objections, what responsive documents it had that it did not intend to produce based on these objections, and when Registrant intended to produce the documents it indicated it might produce on a "rolling basis," Petitioner sent Registrant's counsel a letter, attached as **Exhibit C**, describing the insufficiencies of Registrant's response in light of FRCP 34, explaining the general relevance of Petitioner's requests to the matter, advising Registrant's counsel that Registrant had waived privilege with respect to communications discussing fraud by publishing a blog post disclosing the substance of such communications, and giving Registrant 15 days to provide a proper response. Petitioner also provided detailed instructions for authenticated electronic production, as Registrant's counsel had requested.²

After some additional dispute between the parties as to how Registrant should provide documents³, on June 22, 2018, Petitioner received from Registrant a CD containing four (4) PDF files

2 See **Exhibit D**, p. 4, email from Daniel Byrnes dated 06/15/2018 04:32 PM and p. 4-5, emails from Pamela Chestek dated 05/31/2018 05:03 PM and 5/30/2018 9:29 PM.

3 See **Exhibit D**, p. 4, email from Pamela Chestek dated 06/18/2018 08:39 AM ("I gather that you do not trust the security of a file sharing site. I will therefore mail you a CD with the documents."); p. 3, email from Daniel Byrnes

containing a total of one-thousand-four-hundred-nineteen (1,419) pages of documents and a privilege log containing twenty-two (22) entries, production non-compliant with our instructions that counsel herself had requested. A large portion of these PDF pages were reformatted textual email messages, which Registrant should have provided in the format they are ordinarily kept in the course of business, but which it instead, in violation of Rule 34, chose to make difficult to sort and search through. In one particularly egregious example, a single email chain Registrant provided was reformatted to take up 460 pages of a PDF file, with the majority of those pages containing (other than the automatically generated header and footer), no more than a single line of text on each page/ Registrant also declined to provide documents responsive to each request in a separate folder as Petitioner requested. Instead, Registrant produced 4 separate PDFs with no table of contents, index or any other information identifying the documents contained in them. To further frustrate Petitioner's attempt to analyze Registrant's documents, each PDF contained documents in response to some of the same requests that were provided in the other PDFs, necessitating recompiling their contents in order to obtain the full set of documents being produced in response to each request. For example, Registrant provided documents in response to Document Request 20 spread out across 3 of the 4 PDFs that it produced.

Registrant completely ignored Petitioner's request to provide documents in a manner that preserves the chain of custody and will ensure their authentication and protect their security. Instead Registrant provided a unsigned, unauthenticated, unencrypted CD with no description of the contents

dated 06/18/2018 04:53 PM ("once the file is encrypted to me there is no issue with placing it on a file sharing service or any other public-facing server where I can obtain it. Mailing a single copy of a self-burned CD is grossly inadequate as a means of producing documents for which authentication is of the essence."); p. 2-3, email from Pamela Chestek dated 06/19/2018 08:38 AM ("I do not know how to prepare a file for download on a file-sharing site with encryption. ... You've made it clear that you don't want them unencrypted on a file-sharing site, so the only option I am left with is physical media, which in my experience is how voluminous documents are typically produced. As I said, I will be sending you a CD as soon as I can."); p. 2, email from Daniel Byrnes dated 6/22/2018 3:29 PM ("We require the digital signatures on the documents produced for authentication; the encryption we request is for your client's protection, not ours.").

or how, when or by whom it was collected. Registrant provided no log of destroyed or lost documents, making it impossible to determine what responsive documents, if any, are no longer in its possession.

The documents Registrant did decide to produce further elucidate the problems with the substance of Registrant's Responses. For example, Registrant stated objections to 44 out of the 48 requests. In the four cases where Registrant did not explicitly state objections, the responses Registrant implicitly objected by either not producing documents to those requests at all (in 3 of the 4 cases) or by producing such minimal and useless material as to amount to nothing. Registrant's response to Document Request No. 1 was: "See documents provided in response to Requests 2 through 4." However, no documents were actually provided by Registrant for Requests 2 and 3, and in response to Petitioner's Document Request No. 4, Registrant produced a mere four (4) spam emails received by its general counsel. Registrant also made no explicit objections to Petitioner's Document Request Nos. 46-48, responding to each with "Registrant has produced or will produce relevant, non-privileged documents that are responsive to this request on a rolling basis as they become available." However, Registrant did not produce any documents in response to these requests. In addition to responses noted above (Nos. 2-4 and 46-48), Registrant made the same non-commitment to producing any documents ("Registrant has produced or will produce Registrant has produced or will produce relevant, non-privileged documents that are responsive to this request on a rolling basis as they become available.") in its responses to document request Nos. 9-18, 20, 26, 33, and 35-38. Petitioner regards this as a blanket refusal to provide documents crucial to the investigation of the fraud and confusion claims; these documents are solely within Registrant's control and are not otherwise available to Petitioner.

Registrant made objections that Petitioner is seeking privileged documents or that it will provide non-privileged documents (suggesting, but not confirming, that it is in possession of responsive privileged documents) in response to 37 of Petitioner's 48 requests. Yet in its privilege log, which consists of a mere 22 entries, Registrant does not indicate what request each entry is responsive to,

what privilege applies, or the subject matter of the privileged document, making it impossible for Petitioner to determine whether or not privilege applies. Petitioner has no way of knowing what documents, if any, Registrant is withholding based on these objections. This is particularly important given that Registrant's President, in his blog post of December 22, 2017, provided a blanket waiver of privilege concerning all communications and materials reviewed by counsel on the subject of Petitioner's fraud claim.

Of the 1,419 pages of documents in PDF format that Registrant has produced, more than one-third (543 pages) consist entirely of what appear to be photographs or scans of receipts for expenditures incurred by Registrant's staff in response to Petitioner's Document Request No. 13 for "*All documents identifying the annual advertising and promotional expenditures in the United States for all products and services offered under Registrant's Mark.*" Registrant had objected to this request as "overly burdensome or asks for the production of documents that are not relevant to the subject matter of the suit." Nonetheless, instead of providing Petitioner what it asked for, Registrant sent hundreds of pages of receipts with no identifying information and not in any apparent order and which do not provide any basis for Petitioner to obtain the information it requested from Registrant. Registrant could have easily produced documents reflecting the numbers Petitioner was seeking, but instead it sent a mass of random receipts, obstructing Petitioner's discovery of the information it sought.

Incredibly, nearly one-third (462 pages) of Registrant's production consists of a single malformed e-mail chain in Response to Petitioner's Document Request No. 20 for "*All documents that report, describe, summarize, analyze, discuss or comment on communications directed to, transmitted to, addressed to, or intended for Software Freedom Law Center, Eben Moglen or Mishi Choudhary, but received by Software Freedom Conservancy.*" The majority of these pages consist of little more than a single line of text, making it impossible to make sense of. Registrant could have easily provided this,

and all other e-mails it produced, in the original format that they were maintained in the ordinary course of business, as agreed upon in the initial discovery conference.

Approximately 156 pages of Registrant's production consist of e-mails produced in response to Petitioner's Document Request No. 15 for "All documents that report, describe, summarize, analyze, discuss or comment on invitations or requests for Software Freedom Conservancy to speak at, lead, give a presentation at or exhibit at any meetings, conferences, seminars or any similar types of events." Registrant also produced, over objections that they were "equally available to Petitioner," 122 pages of documents in response to Petitioner's Document Request No. 37 for "All documents tending to prove Registrant's affirmative defenses" consisting entirely of the identical documents that Registrant filed with the Board as Exhibits to its Motion for Summary Judgment.

This leaves a paltry 136 pages of documents that Registrant has produced in response to the remainder of Petitioner's requests.

- As noted above, in response to Petitioner's Document Request No. 4, Registrant provided 4 email messages that appear to be spam that Registrant received.
- In response to Document Request No. 9 for "*All documents that report, describe, summarize, analyze, discuss or comment on efforts by Software Freedom Conservancy to police the SFC Mark and the Conservancy Mark*" Registrant provided 9 email messages from 2 separate email chains, all dating from 2012 and regarding the same incident.
- As already noted above, Document Request No. 13 was comprised of 543 pages of information entirely insufficient to respond to the request.
- In response to Document Request No. 17 for "*All documents that report, describe, summarize, analyze, discuss or comment on confusion between Software Freedom Conservancy and any of its products and services and Software Freedom Law Center and any of its products and*

services, including, but not limited to, any internal records of written or oral communication between or among SFC employees” Registrant provided a mere 3 email messages dating from 2014 regarding the same incident.

- In response to Document Request No. 18 for “*All documents that report, describe, summarize, analyze, discuss or comment on comparisons between Software Freedom Conservancy and any of its products or services and Software Freedom Law Center and any of its products or services*” Registrant provided 2 email messages dating from 2011, one email message dating from 2018, and one undated document.
- In response Document Request No. 20, for “*All documents that report, describe, summarize, analyze, discuss or comment on communications directed to, transmitted to, addressed to, or intended for Software Freedom Law Center, Eben Moglen or Mishi Choudhary, but received by Software Freedom Conservancy*” Registrant produced 9 email messages and 2 email chains. One of these email chains, as already noted above, consists of 462 pages, most of which is impossible to make sense of due to Registrant’s conversion of the email to PDF format.
- In response to Document Request No. 25, for “*All minutes, recordings, summaries, or reports of meetings, whether formal or informal, of the meetings of Registrant’s board of directors.*” Registrant produced 9 email messages and one document, all dating from 2009-2011. No explanation was provided for withholding all such documents over the last seven years.
- In response to Document Request No. 26, for “*All documents that report, describe, summarize, analyze, discuss or comment on the decision of Software Freedom Conservancy to offer legal services or legal advice*” Registrant produced 5 email messages dating from 2011 and 2 emails dating from 2015.

- In response to Document Request No. 37, for “*All documents tending to prove Registrant’s affirmative defenses*” Registrant produced 9 email messages and 111 pages of documents that are the identical Exhibits (including the Exhibit numbers) that were appended to Registrant’s Motion for Summary Judgment.
- Registrant did not produce any documents in response to Document Request No.s 1, 2, 3, 8, 11,14,16,19,21-24, 27-36, and 38-48.

Petitioner sent Registrant a letter on July 16, 2018, attached as **Exhibit E**, noting many of the issues that Petitioner had with Registrants production of documents, and reiterating the unresolved issues with Registrant’s Responses that had been raised in earlier communications. Registrant’s counsel replied by email promising to respond “in due course.”⁴ Petitioner’s Counsel followed up with Registrant’s counsel on July 18, 2018 by email attempting to arrange a phone call to discuss the issues raised so far. Registrant’s counsel declined, saying that she would respond in writing. On July 20, 2018 another attorney, John L. Welch, filed a notice of appearance for Registrant as co-counsel to Ms. Chestek, and emailed to say that he would need “some time to get up to speed” before he would provide a response. In a subsequent email Mr. Welch declined Petitioner’s Counsel’s invitation to speak with him regarding the matter at some point in the next week⁵. On August 13, 2018 Mr. Welch emailed a letter, attached as **Exhibit H**, that made it clear that, other than being willing to discuss⁶ the issues Petitioner raised regarding the adequacy of the privilege log Registrant provided, it would not be providing any more documents, and would object to any additional document requests “on the ground that the number of requests already served, counting subparts, exceeds the numerical limit of seventy-five.” As a result, Petitioner has not yet received any responses to Document Request No.s 1, 2, 3, 8, 11,14,16,19,21-24, 27-36, and 38-48 and received insufficient responses with a single email chain

4 See **Exhibit E**, p. 1-2, email from Pamela Chestek dated 07/16/2018 07:49 PM.

5 See **Exhibit G**, emails from John Welch

6 Although it is not clear what that discussion would be about since Registrant’s counsel added that “it believes the log it provided is adequate.”

converted to PDF or random receipts or copies of spam emails. Furthermore, Petitioner has not been able to conduct additional, relevant written discovery or conduct depositions in this proceeding regarding the registration of the mark. Instead, Registrant has attempted to railroad Petitioner with the premature filing of the present Motion before Petitioner was afforded any reasonable opportunity to obtain sufficient evidence, to oppose the Motion. Absent discovery, Petitioner is unable to adequately respond to the Registrant's Motion.

ARGUMENT

A. Standard for Motions under Fed. R. Civ. P. 56(d)

Under the Federal Rules of Civil Procedure, “the parties must be afforded adequate time for general discovery before being required to respond to a motion for summary judgment.” *Metro. Life Ins. Co. v. Bancorp Servs., L.L.C.*, 527 F.3d 1330, 1336 (Fed. Cir. 2008) (citation omitted); *Dunkin' Donuts of Am., Inc. v. Metallurgical Exoproducts Corp.*, 840 F.2d 917, 919 (Fed. Cir. 1988) (emphasizing that the Supreme Court in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), made it clear that summary judgment is inappropriate unless the tribunal permits the parties adequate time for discovery). Pursuant to Fed. R. Civ. P. 56(d) and TBMP § 528.06, a party that believes it cannot effectively oppose a motion for summary judgment without first taking discovery, may file a request with the Board for time to take the needed discovery. The request must be supported by an affidavit showing that the nonmoving party cannot, for reasons stated, present by affidavit facts essential to justify its opposition to the motion. See Fed. R. Civ. P. 56(d); *Opryland USA, Inc. v. Great Am. Music Show, Inc.*, 970 F.2d 847, 852-53 (Fed. Cir. 1992) (finding sufficient need for additional discovery); *Keebler Co. v. Murray Bakery Prods.*, 866 F.2d 1386, 1390 (Fed. Cir. 1989). As a general rule, “discovery motions are ‘broadly favored and should be liberally granted’” because the rule is designed to “safeguard non-moving parties from summary judgment motions that they cannot adequately oppose.” *Accent Packaging, Inc. v. Leggett &*

Platt, Inc., 707 F.3d 1318, 1328 (Fed. Cir. 2013) (citation omitted). If a party has demonstrated a need for discovery which is reasonably directed to facts essential to its opposition to the motion for summary judgment, discovery will be permitted. See *Opryland USA, Inc. v. Great Am. Music Show, Inc.*, 970 F.2d 847, 852 (Fed. Cir. 1992). This is especially true when the information sought is largely within the control of the party moving for summary judgment. See *Orion Group, Inc. v. Orion Ins. Co. P.L.C.*, 1989 TTAB LEXIS 65, 12 U.S.P.Q.2D 1923, 1925-26 (TTAB 1989). Fed. R. Civ. P. 56(d) specifically provides nonmovants with protection from being “railroaded” by premature summary judgment motions or the improper entry of summary judgment when the nonmoving party has not had an opportunity to exercise pre-trial discovery. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986) (Rule [56(d)] provides nonmovants with protection from being "railroaded" by premature summary judgment motions); *Dunkin' Donuts of America, Inc. v. Metallurgical Exoproducts Corp.*, 840 F.2d 917, 919 (Fed. Cir. 1988) (holding Board prematurely granted summary judgment, contrary to 56(d)).

B. SFLC Cannot Effectively Oppose the Summary Judgment Motion Without a Reasonable Opportunity to Engage in Discovery

SFLC has yet to obtain the necessary discovery on each of the specific topics discussed more fully below which would discover facts needed to place at issue material factual questions in opposition to the Motion, including the very availability of the defenses on which Registrant seeks judgment. Petitioner cannot reasonably conduct depositions, issue follow up discovery requests, or prepare for trial until Registrant has completely complied with its outstanding document production obligation. Discovery is particularly essential in this proceeding in order for Petitioner to respond to the Motion because the issue of fraud is highly fact-intensive and all of the relevant facts that form the basis of the motion are peculiarly and uniquely within the knowledge and control of Registrant. Without this discovery, Petitioner cannot effectively oppose Registrant’s Motion.

1. The Board in its order of April 26, 2018, invited Petitioner to acquire in discovery evidence that Registrant had present knowledge of likelihood of confusion at the time of application for the mark. Petitioner asserts that the Applicant had such knowledge, but all evidence of its knowledge lies within its control. Without discovery, Petitioner cannot adequately contest Registrant's summary judgment motion with respect to defenses of which Registrant cannot lawfully avail itself.

a. Registrant's obstructive behavior following our Rule 34 request intentionally provided no response to our request for internal correspondence and other evidence reflective of Registrant's knowledge of likely or inevitable confusion at the time of application for the challenged mark. SFLC therefore cannot, without completion of document discovery, submission of interrogatories and conduct of depositions effectively oppose the summary judgment motion by demonstrating the existence of dispute concerning facts material to the disposition of this case.

b. Registrant's failure to comply with its obligations in discovery prevents SFLC from effectively contesting the motion for summary judgment on any other factual grounds, because SFLC has effectively been denied all discovery, with respect to all contested issues of fact, thus rendering summary judgment premature with respect to any claims or defenses Registrant may choose to make.

c. Petitioner's Document Request 34 asked for "All documents that report, describe, summarize, analyze, discuss or comment on the fraud in the procurement of Registrant's Mark, including all documents to and from Registrant's attorney." When Conservancy's counsel declined to provide such documents, Petitioner pointed out that attorney-client privilege had been waived with respect to the topic of fraud by Conservancy when its President Bradley Kuhn disclosed to the general public the substance of privileged legal advice Conservancy had received from its attorney by publishing a blog

post on Conservancy's website.^{7,8} Yet Conservancy continues to maintain that attorney-client privilege is undisturbed.⁹ In a blog post published by Registrant's website on December 22, 2017¹⁰, Kuhn volunteered that "Obviously, we did not commit fraud; our legal counsel, Pam Chestek, has advised us that SFLC's fraud allegation is "unequivocally unfounded"." See **Exhibit I**. Conservancy cannot show such blatant indifference to confidentiality by disclosing the substance of communications it had with its attorney and now claim that attorney-client privilege still applies to those communications. See. *Lenz v. Universal Music Corp.*, No. C 07-03783 JF (PVT), 2010 U.S. Dist. LEXIS 119271, at *8,9 (N.D. Cal. Oct. 22, 2010) (plaintiff waived privilege by disclosing the actual substance of conversations with her attorney on her blog); *Chubb Integrated Sys., Ltd. v. Nat'l Bank*, 103 F.R.D. 52, 63 (D.D.C. 1984) (disclosure of attorney-client communications constitutes a waiver of privilege when the gist of the privileged communication is revealed); *Jobin v. Bank of Boulder (In re M & L Bus. Mach. Co.)*, 161 B.R. 689, 693 (D. Colo. 1993) (privilege is waived when the substance of the confidential communication is disclosed to a third party).

Petitioner commenced this proceeding by filing a Petition to Cancel on September 22, 2017. Attempting to prevent SFLC's discovery, Registrant submitted a first premature summary judgment motion on December 11, 2017, which was denied by the Board in its order of December, 28, 2018. Petitioner submitted its First (and only) Document Request on April 30, 2018, and received only obstructive responses. Registrant added counsel after considerable delay in responding to our request, who asked for time "to get up to speed," refused attempts to resolve our discovery disagreements, all

7 See **Exhibit C** ("please respond immediately to Document Request 34 for all materials related to your advice to Conservancy regarding fraud, as attorney-client privilege re-garding this topic was waived by Bradley Kuhn in his blog post on December 22, 2017.")

8 See **Exhibit E** ("I also brought to your attention the fact that your client had waived attorney-client privilege related to fraud and demanded you respond to our request for such materials immediately. You have ignored these deadlines.")

9 See **Exhibit H** ("...we flatly reject Petitioner's contention that Respondent has waived the attorney-client privilege related to "fraud" or to any other issue.")

10 See <https://sfconservancy.org/blog/2017/dec/22/sflc-escalation/>

for the purpose of gaining time to prepare another premature and purely dilatory summary judgment motion.

C. Additional Considerations

SFLC will suffer actual and substantial prejudice if it is not permitted to secure discovery pertaining to the issue of fraud, actual confusion and likelihood of confusion with respect to the mark sought to be canceled, because SFLC cannot effectively oppose this motion without discovery. Conversely, this request to defer ruling on SFC's Motion and to provide SFLC the opportunity to take discovery under Fed.R.Civ.P. 56 (d) will not prejudice SFC, because this continuance is necessitated by SFC's conduct.

CONCLUSION

For the reasons set forth herein, and in the attached declaration of Mishi Choudhary, SFLC respectfully requests that the Board deny Registrant's Motion for Summary Judgment and provide SFLC the opportunity to take discovery on issues relevant to its claims for cancellation.

Petitioner further moves this Board for any other relief it deems appropriate.

Dated: September 21, 2018

New York, New York

Respectfully submitted,

/Mishi Choudhary/
Mishi Choudhary
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212-461-1912

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 21st day of September, 2018 service of PETITIONER'S MOTION UNDER FED. R. CIV. P. 56(d) FOR DISCOVERY AND TO DEFER CONSIDERATION OF SFC'S MOTION FOR SUMMARY JUDGMENT was made to the following attorney via electronic mail:

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By: /Mishi Choudhary/
Mishi Choudhary

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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**DECLARATION OF MISHI CHOUDHARY IN SUPPORT OF PETITIONER'S MOTION
UNDER FED. R. CIV. P. 56(d) FOR DISCOVERY AND TO DEFER CONSIDERATION OF
REGISTRANT'S MOTION FOR SUMMARY JUDGMENT**

I, Mishi Choudhary, declare as follows:

1. I represent Software Freedom Law Center ("Petitioner" or "SFLC") in the above captioned matter.
2. I have knowledge of the facts set forth herein and in Petitioner's Motion under Fed.R.Civ.P 56 (d) and can testify competently to those facts.
3. This Declaration is submitted pursuant to Federal Rule of Civil Procedure 56(d), which provides,

(d) When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order.

- 4. Attached to this Declaration as Exhibit A is a true and correct copy of Petitioner's First Document Request dated April 30, 2018 containing forty-eight (48) requests for documents pertaining to the validity of trademark in dispute.
- 5. Attached to this Declaration as Exhibit B is a true and correct copy of Registrant's Responses to Petitioner's First Set of Request for Documents and Things dated May 30, 2018.
- 6. Attached to this Declaration as Exhibit C is a true and correct copy of Petitioner's letter to Registrant's counsel dated June 15, 2018 describing the insufficiencies of Registrant's response in light of FRCP 34, explaining the general relevance of Petitioner's requests to the matter, advising Registrant's counsel that Registrant had waived privilege with respect to communications discussing fraud by publishing a blog post disclosing the substance of such communications, and giving Registrant 15 days to provide a proper response, providing detailed instructions for how whatever documents Registrant intended to produce be provided to Petitioner, as Registrant had requested.
- 7. Attached to this Declaration as Exhibit D is a true and correct copy of print outs of email from Petitioner's Counsel, Daniel Byrnes dated June 15, 2018 04:32 PM and emails from Registrant's counsel Pamela Chestek dated May 31, 2018 05:03 PM and May 30, 2018 9:29 PM.
- 8. Attached to this Declaration as Exhibit E is a true and correct copy of Petitioner's letter dated July 16, 2018 noting many of the issues that Petitioner had with Registrant's production of

documents, and reiterating the unresolved issues with Registrant's Responses that had been raised in earlier communications. Registrant's counsel replied by email promising to respond "in due course."

9. Attached to this Declaration as Exhibit F is a true and correct copy of print out of emails from Registrant's Counsel Pamela Chestek dated July 16, 2018.
10. Attached to this Declaration as Exhibit G is a true and correct copy of print out of emails of Registrant's Counsel John L. Welch dated July 20, 2018 and July, 22, 2018.
11. Attached to this Declaration as Exhibit H is a true and correct copy of the letter by Registrant's Counsel John L. Welch to the Petitioner dated August 13, 2018.
12. Attached to this Declaration as Exhibit I is a true and correct copy of a print out of a blog post published on Registrant's website on December 22, 2017 by Bradley M. Kuhn .
13. Petitioner's First Set of Requests for Documents and Things were served on Registrant on April 30, 2018.
14. On August 24, 2018 Registrant filed its second Motion for Summary Judgment ("Motion") . Prior to Registrant's filing of the Motion, Petitioner had made several attempts to receive adequate responses to Petitioner's First set of Requests for Documents. Registrant has repeatedly engaged in dilatory tactics, refused production of documents, refused to provide specific reasons for objections to production, and refused Petitioner's invitations for phone calls. Petitioner has made a good faith effort to resolve the issues presented by Registrant's Response and production of documents. Additional details regarding the nature and dates of these good faith efforts are contained in the letters from Petitioner to Registrant of June 15, 2018 and July 16, 2018 attached as Exhibit C and Exhibit E, respectively.
15. Petitioner cannot adequately respond to the Motion without obtaining discovery from the Registrant to place at issue material factual questions in opposition to the Motion. The

information needed to respond to the Registrant's Motion is uniquely possessed by the Registrant and is the type of information Petitioner seeks in written discovery and depositions.

16. Particularly, Petitioner does not have sufficient evidence regarding Registrant's fraudulent intent in applying for its trademark in order to present genuine issues of material fact as it relates to Petitioner's claim of fraud. Such information is crucial to the extent that the Registrant's knowledge of actual confusion prior to filing of the application for the challenged mark goes to heart of the fraud claim, as explained by the Board in its order of April 28, 2018. Discovery is particularly essential in this proceeding in order for Petitioner to respond to the Motion for Summary Judgment because the equitable defenses upon which Registrant relies are unavailable in claims of fraud.

17. Petitioner has insufficient facts to permit Petitioner to show the presence of a genuine issue of material fact regarding actual confusion. The information needed is uniquely possessed by the Registrant and is the type of information Petitioner seeks in document production, written interrogatories and depositions.

18. As of the date of this Declaration, Registrant has not adequately responded to Petitioner's First Set of Requests for Documents and Things or produced many of the documents Petitioner has requested.

19. I declare under penalty of perjury that all of the foregoing is true and correct.

Executed on September 21, 2018

New York, NY

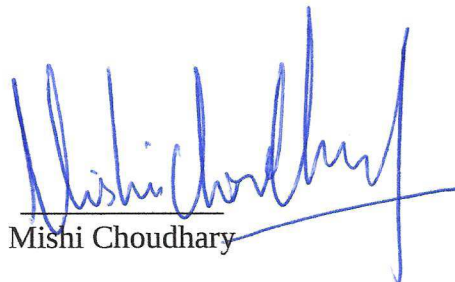

Mishi Choudhary

EXHIBIT A

For the mark: SOFTWARE FREEDOM CONSERVANCY

Registered: September 25, 2012

----- X

Software Freedom Law Center, Inc.,

Petitioner,

v.

Software Freedom Conservancy, Inc.,

Registrant.

Cancellation No. 92066968

----- X

PETITIONER’S FIRST SET OF REQUESTS FOR DOCUMENTS AND THINGS

Pursuant to Trademark Rule of Practice 2.120 (37 U.S.C. § 2.120), Trademark Trial and Appeal Board Manual of Procedure § 408, and Federal Rule of Civil Procedure 34, Petitioner Software Freedom Law Center, Inc. (“SFLC”) requests that Registrant Software Freedom Conservancy, Inc. (“SFC”) produce and permit inspection and copying the documents and things listed below at the offices of Petitioner within thirty (30) days of service of these Requests, or at another mutually agreed upon location.

INSTRUCTIONS AND DEFINITIONS

1. “Document” is used in the broadest sense possible consistent with the Federal Rules of Civil Procedure as adopted by the Trademark Rules of Practice and includes, without limitation, any written, recorded, or graphic material of any kind, whether prepared by you or by any other person, that is in your possession, custody, or control. The term includes agreements; contracts; letters; telegrams; inter-office communications; memoranda; reports; records; instructions;

specifications; notes; notebooks; scrapbooks; diaries; plans; drawings; sketches; blueprints; diagrams; photographs; photocopies; charts; graphs; descriptions; drafts, whether or not they resulted in a final document; minutes of meetings, conferences, and telephone or other conversations or communications; invoices; purchase orders; bills of lading; recordings; published or unpublished speeches or articles; publications; transcripts of telephone conversations; phone mail; electronic-mail; ledgers; financial statements; microfilm; microfiche; tape or disc recordings; computer print-outs; internet postings on any websites (even if subsequently deleted), internet postings on social networking websites, platforms or apps such as facebook.com or twitter.com (even if subsequently deleted), and all other records kept by electronic, photographic, electrical, mechanical, or other tangible means, and anything similar to the foregoing however denominated.

The term “document” also includes electronically stored data from which information can be obtained either directly or by translation through detection devices or readers; any such document is to be produced in a reasonably legible and usable form. The term “document” includes all drafts of a document and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original. The term also includes information stored in, or accessible through, computer or other information retrieval systems (including any computer archives or back-up systems), together with instructions and all other materials necessary to use or interpret such data compilations.

Without limitation on the term "control" as used in the preceding paragraph, a document is deemed to be in your control if you have the right to secure the document or a copy thereof from another person.

2. “Discussion,” “discussions,” “discuss,” “discusses,” “mention,” “mentions,” “describe,” “describes,” “analyze” or “analyzes” means any and all inquiries, conferences, conversations,

negotiations, agreements or other forms or methods of oral communication or such dialogue sent via e-mail, facsimile, letter, chat, or other written communication.

3. “Software Freedom Conservancy,” “You,” “Your,” “SFC,” or “Registrant” means Software Freedom Conservancy, Inc., each of its successors, divisions, subsidiaries, and affiliates, located both in the United States and in any other country, and all present and former directors, officers, employees, agents, consultants, or other persons acting for or on behalf of any of them.
4. “Registrant’s Mark” or the “SFC Mark” means the trademark SOFTWARE FREEDOM CONSERVANCY as identified in Reg. No. 4212971.
5. “Conservancy Mark” means the trademark CONSERVANCY as identified in Reg. No. 86048235.
6. “The Software Conservancy Marks” means the trademarks applied for in the applications with Serial Nos. 87670034 and 87670106.
7. “Petitioner,” “Software Freedom Law Center,” or “SFLC” means Software Freedom Law Center, Inc.
8. “USPTO” means U.S. Patent and Trademark Office.
9. “All” and “each” shall be construed as “all and each.”
10. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
11. The use of the singular form of any word includes the plural and vice versa.
12. For any document responsive to these document requests which is known to have been destroyed or lost, or is otherwise unavailable, identify each such document by author, addressee, date, number of pages, and subject matter; and explain in detail the events leading to the destruction or loss, or the reason for the unavailability of such document, including the location

of such document when last in your possession, custody, or control, and the date and manner of its disposition.

13. If any document or thing is not produced based on a claim of privilege, or if Registrant contends a document or thing is otherwise excludable from discovery, Registrant shall provide Petitioner with a privilege log in compliance with Rule 26(b)(5) of the Federal Rules of Civil Procedure.

14. If Registrant objects to any request as overly broad or unduly burdensome, Registrant shall produce those documents and/or things that are unobjectionable and specifically identify the respect in which the request is allegedly overly broad or burdensome, respectively.

DOCUMENTS AND THINGS REQUESTED

DOCUMENT REQUEST NO. 1:

Documents sufficient to identify the persons who participated in, or have knowledge about, the decision to file the application with the USPTO to register the SFC Mark.

DOCUMENT REQUEST NO. 2:

All documents that report, describe, summarize, analyze, discuss or comment on Registrant's decision to file the application with the USPTO to register the SFC Mark.

DOCUMENT REQUEST NO. 3:

All documents that report, describe, summarize, analyze, discuss or comment on the application with the USPTO to register the SFC Mark.

DOCUMENT REQUEST NO. 4:

All documents and things concerning any investigation, trademark search or other inquiry conducted by Registrant or on Registrant's behalf concerning the proposal to use, availability, attempt to register, registration, or use of Registrant's Mark.

DOCUMENT REQUEST NO. 5:

All documents that report, describe, summarize, analyze, discuss or comment on the creation, selection, adoption, filing, and USPTO office actions of the trademark application for the registration of the Conservancy Mark.

DOCUMENT REQUEST NO. 6:

All documents that report, describe, summarize, analyze, discuss or comment on the creation, selection, adoption, filing, and USPTO office actions of the trademark application for the registration of The Software Conservancy Marks.

DOCUMENT REQUEST NO. 7:

All documents that report, describe, summarize, analyze, discuss or comment on the use of “Conservancy” and the acronym “SFC” to refer to Software Freedom Conservancy.

DOCUMENT REQUEST NO. 8:

All documents that report, describe, summarize, analyze, discuss or comment on Registrant’s decision not to file an application with the USPTO to register the acronym “SFC” in connection with Registrant’s goods and services.

DOCUMENT REQUEST NO. 9:

All documents that report, describe, summarize, analyze, discuss or comment on efforts by Software Freedom Conservancy to police the SFC Mark and the Conservancy Mark.

DOCUMENT REQUEST NO. 10:

Specimens of, or documents that show, each and every product and service offered, or intended to be offered, under Registrant’s Mark, or any marks which comprise or incorporate Registrant’s Mark alone or in combination with other elements.

DOCUMENT REQUEST NO. 11:

All documents that report, describe, summarize, analyze, discuss or comment on the channels through which Registrant advertises and promotes Registrant's products or services under Registrant's Mark, or intends to advertise and promote products or services under Registrant's Mark.

DOCUMENT REQUEST NO. 12:

One copy of each advertising, marketing, and promotional material for products or services under Registrant's Mark, whether used or not, including, without limitation, print advertisements, web pages, catalogs, mailers, circulars, brochures, press releases, letters, press kits, web-based advertisements, emails, texts, promotional posts on social media sites, and transcripts and recordings of audio and video advertisements.

DOCUMENT REQUEST NO. 13:

All documents identifying the annual advertising and promotional expenditures in the United States for all products and services offered under Registrant's Mark.

DOCUMENT REQUEST NO. 14:

All documents sufficient to identify all trade fairs, trade shows, trade exhibitions, and trade expos that Registrant attends.

DOCUMENT REQUEST NO. 15:

All documents that report, describe, summarize, analyze, discuss or comment on invitations or requests for Software Freedom Conservancy to speak at, lead, give a presentation at or exhibit at any meetings, conferences, seminars or any similar types of events.

DOCUMENT REQUEST NO. 16:

All documents that report, describe, summarize, analyze, discuss or comment on any instance in which Registrant noted or objected to any third-party use or registration of a name or mark believed by Registrant to be confusingly similar to or infringing on Registrant's Mark.

DOCUMENT REQUEST NO. 17:

All documents that report, describe, summarize, analyze, discuss or comment on confusion between Software Freedom Conservancy and any of its products and services and Software Freedom Law Center and any of its products and services, including, but not limited to, any internal records of written or oral communication between or among SFC employees.

DOCUMENT REQUEST NO. 18:

All documents that report, describe, summarize, analyze, discuss or comment on comparisons between Software Freedom Conservancy and any of its products or services and Software Freedom Law Center and any of its products or services.

DOCUMENT REQUEST NO. 19:

All documents that report, describe, summarize, analyze, discuss or comment on Software Freedom Law Center, the services of Software Freedom Law Center, Eben Moglen or Mishi Choudhary.

DOCUMENT REQUEST NO. 20:

All documents that report, describe, summarize, analyze, discuss or comment on communications directed to, transmitted to, addressed to, or intended for Software Freedom Law Center, Eben Moglen or Mishi Choudhary, but received by Software Freedom Conservancy.

DOCUMENT REQUEST NO. 21:

All corporate documents of Registrant, including certificate of incorporation, bylaws, rules, regulations, procedures, and any proposed amendments thereto.

DOCUMENT REQUEST NO. 22:

All documents that report, describe, summarize, analyze, discuss or comment on Patrick McHardy.

DOCUMENT REQUEST NO. 23:

All documents that report, describe, summarize, analyze, discuss or comment on financial transactions to and/or from Patrick McHardy and any companies partially or completely controlled by him.

DOCUMENT REQUEST NO. 24:

All documents that report, describe, summarize, analyze, discuss or comment on Christoph Hellwig.

DOCUMENT REQUEST NO. 25:

All minutes, recordings, summaries, or reports of meetings, whether formal or informal, of the meetings of Registrant's board of directors.

DOCUMENT REQUEST NO. 26:

All documents that report, describe, summarize, analyze, discuss or comment on the decision of Software Freedom Conservancy to offer legal services or legal advice.

DOCUMENT REQUEST NO. 27:

All documents that report, describe, summarize, analyze, discuss, comment on, advertise or promote the provision of legal services or legal advice by Software Freedom Conservancy.

DOCUMENT REQUEST NO. 28:

A copy of each version of Registrant's website that has been published at the domain sfconservancy.org.

DOCUMENT REQUEST NO. 29:

All documents referring to or reflecting all insurance policies and insurance coverage which Software Freedom Conservancy has or has had, including malpractice and directors and officers liability insurance.

DOCUMENT REQUEST NO. 30:

All documents filed by Registrant with the Charities Bureau of the New York State Office of the Attorney General.

DOCUMENT REQUEST NO. 31:

All of Registrant's financial records up until September 22, 2017.

DOCUMENT REQUEST NO. 32:

All documents that report, describe, summarize, analyze, discuss or comment on Registrant's recruitment of Anthony K. Sebro, Jr. to the post of General Counsel and to the Registrant's Board of Directors.

DOCUMENT REQUEST NO. 33:

All documents that report, describe, summarize, analyze, discuss or comment on the review of the "trademark portfolio of Conservancy" referred to in paragraph 20 of Declaration of Bradley M. Kuhn in Support of Respondent's Motion for Summary Judgment on its Affirmative Defenses.

DOCUMENT REQUEST NO. 34:

All documents that report, describe, summarize, analyze, discuss or comment on the fraud in the procurement of Registrant's Mark, including all documents to and from Registrant's attorney.

DOCUMENT REQUEST NO. 35:

All documents tending to show that there is no likelihood of confusion between the marks at issue.

DOCUMENT REQUEST NO. 36:

All documents tending to show that Software Freedom Conservancy had the exclusive right to use the SFC Mark as of any date prior to the date Registrant filed its application for the SFC Mark with the USPTO.

DOCUMENT REQUEST NO. 37:

All documents tending to prove Registrant's affirmative defenses.

DOCUMENT REQUEST NO. 38:

All documents concerning any social media account or social media username owned on behalf of SFC.

DOCUMENT REQUEST NO. 39:

All documents that report, describe, summarize, analyze, discuss or comment on any IRC channel owned or operated on behalf of SFC, including, but not limited to, logs.

DOCUMENT REQUEST NO. 40:

All documents that report, describe, summarize, analyze, discuss or comment on any IRC channel owned or operated on behalf of SFLC, including, but not limited to, logs.

DOCUMENT REQUEST NO. 41:

One copy of each podcast featuring Bradley Kuhn or Karen Sandler, whether publicly available or not, including, without limitation, all episodes of “Free as in Freedom” and “The Software Freedom Law Show.”

DOCUMENT REQUEST NO. 42:

All documents that report, describe, summarize, analyze, discuss, comment or are transcriptions of all podcasts featuring Bradley Kuhn or Karen Sandler, whether publicly available or not, including, without limitation, all episodes of “Free as in Freedom” and “The Software Freedom Law Show.”

DOCUMENT REQUEST NO. 43:

All documents that report, describe, summarize, analyze, discuss or comment on the termination of employment of Bradley Kuhn at SFLC.

DOCUMENT REQUEST NO. 44:

All documents that report, describe, summarize, analyze, discuss or comment on the termination of employment of Karen Sandler at SFLC.

DOCUMENT REQUEST NO. 45:

All documents generated from, to, or concerning copyleft.org responsive to any of the above requests.

DOCUMENT REQUEST NO. 46:

All documents generated by/from karen@punkrocklawyer.com responsive to any of the above requests.

DOCUMENT REQUEST NO. 47:

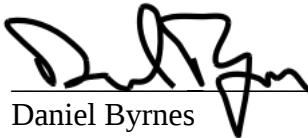
All documents generated by/from bkuhn@ebb.org responsive to any of the above requests.

DOCUMENT REQUEST NO. 48:

All documents posted to Twitter.com, Facebook.com, any other social networking platform responsive to any of the above requests.

Dated: April 30, 2018

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Daniel Byrnes', is written over a horizontal line.

Daniel Byrnes
Software Freedom Law Center
435 West 116th Street
New York, NY 10027
Attorney for Petitioner

dbyrnes@softwarefreedom.org
212-461-1906

EXHIBIT B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 4212971
Mark: SOFTWARE FREEDOM CONSERVANCY
Registration date: September 25, 2012

Software Freedom Law Center

Petitioner,

v.

Software Freedom Conservancy

Registrant.

Cancellation No. 92066968

**RESPONSES TO PETITIONER’S FIRST SET OF REQUESTS FOR DOCUMENTS AND
THINGS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, 37 C.F.R. § 2.120(d) and TMBP § 406, the Software Freedom Conservancy, Inc. (“Registrant”) hereby responds and objects to Petitioner’s First Set of Requests for Production of Documents and Things (“Petitioner’s First Request” or “Request”) as follows:

GENERAL OBJECTIONS

1. Registrant objects to the definitions and instructions contained in Petitioner’s First Request to the extent that those definitions and instructions differ from or seek to alter the applicable Federal Rules of Civil Procedure, United States Patent and Trademark Office Rules of Practice, and Trademark Trial and Appeal Board Manual of Procedure.

2. Registrant’s answers and objections are made to the best of its present knowledge, information and belief. Said answers and objections are at all times subject to such additional or different information that discovery or further investigation may disclose. Registrant reserves the right to provide supplemental responses as additional information becomes available or is made known to Registrant.

3. Registrant objects to any Request which seeks information and/or identification of documents and/or production of documents that embody material that is privileged or attorney

work product on the grounds that such information and documents are privileged or confidential and the disclosure of such confidential information would be damaging to Registrant.

4. Registrant reserves the right to produce only the responsive portions of a document when that document also contains non-responsive, confidential, privileged, proprietary or personal information, or other information not relevant to the subject matter of this action.

5. Registrant objects to any Request to the extent it seeks documents not in the possession, custody or control of Registrant or seeks to require Registrant to respond on behalf of any entity other than Registrant.

6. Registrant objects to any Request to the extent Petitioner seeks information regarding issues that are proper subjects for experts that have not yet been designated and Registrant objects to the Requests to the extent that they seek an expert opinion.

7. Registrant objects to any Request to the extent it seeks information of matters of public record or information that is equally available to Petitioner.

8. Registrant objects to any Request to the extent that it assume facts not in evidence, state a legal conclusion, or otherwise are erroneous.

9. Registrant objects to any Request to the extent it requires that Registrant create a document not in existence or provide information in addition to that which is disclosed in the document itself.

10. Registrant does not represent that there exist any documents responsive to any particular request, and Registrant's statement that documents responsive to a particular request will be produced does not mean that any such documents in fact exist or that Registrant has possession, custody or control over said document(s). Further, the production of a document categorized as responsive to a particular Request is not a representation that the document is in fact responsive to that Request or that Registrant will not rely on the document in support of other claims or defenses. Additionally, the production of a document pursuant to a Request is not a representation that the document is in fact relevant to the subject matter of the suit.

11. Registrant objects to any Request that is overly broad, irrelevant, vague and unduly burdensome; that goes beyond the allegations of any claim or defense asserted herein; that is not appropriately limited to subjects, times, geographic territories, and areas relevant to this proceeding; that requires legal conclusions; or that is not proportional to the needs of the case.

All of Registrant's responses are made subject to the foregoing objections, comments and qualifications. Subject to these "General Objections" and the limitations which are outlined with regard to each specifically numbered Response, Registrant responds to Petitioner's Request for Production of Documents without waiver of, and with the preservation of the right to object on the grounds of competency, privilege, relevance, materiality or any other proper ground; to the use of any material produced herein, in whole or in part, for any purpose, in any subsequent proceeding in this action or in any other action; and the right to object on any and all proper grounds, at any time, to other requests, or other discovery procedures involving or relating to the subject matter of the requests responded to herein.

RESPONSES AND SPECIAL OBJECTIONS TO REQUESTS FOR PRODUCTION OF
DOCUMENTS

DOCUMENT REQUEST NO. 1:

Documents sufficient to identify the persons who participated in, or have knowledge about, the decision to file the application with the USPTO to register the SFC Mark.

Response: See documents provided in response to Requests 2 through 4.

DOCUMENT REQUEST NO. 2:

All documents that report, describe, summarize, analyze, discuss or comment on Registrant's decision to file the application with the USPTO to register the SFC Mark.

Response: Registrant objects to the extent the Request asks for the production of documents that are privileged. Subject to such objection and without waiving same, Registrant will produce relevant, non-privileged documents that are responsive to this request on a rolling basis as they become available.

DOCUMENT REQUEST NO. 3:

All documents that report, describe, summarize, analyze, discuss or comment on the application with the USPTO to register the SFC Mark.

Response: Registrant objects to the extent the Request asks for the production of documents that are privileged or not relevant to the subject matter of the suit. Subject to such objection and without waiving same, Registrant will produce relevant, non-privileged documents that are responsive to this request on a rolling basis as they become available.

DOCUMENT REQUEST NO. 4:

All documents and things concerning any investigation, trademark search or other inquiry conducted by Registrant or on Registrant's behalf concerning the proposal to use, availability, attempt to register, registration, or use of Registrant's Mark.

Response: Registrant objects to the extent the Request asks for the production of documents that are privileged or not relevant to the subject matter of the suit. Subject to such objection and without waiving same, Registrant will produce relevant, non-privileged documents that are responsive to this request on a rolling basis as they become available.

DOCUMENT REQUEST NO. 5:

All documents that report, describe, summarize, analyze, discuss or comment on the creation, selection, adoption, filing, and USPTO office actions of the trademark application for the registration of the Conservancy Mark.

Response: Registrant objects to the Request, which seeks documents relating to the "Conservancy Mark," not the trademark in suit, on the basis that it seeks documents that are not relevant to the subject matter of the suit and further objects to the extent it seeks documents that are privileged.

DOCUMENT REQUEST NO. 6:

All documents that report, describe, summarize, analyze, discuss or comment on the creation, selection, adoption, filing, and USPTO office actions of the trademark application for the registration of The Software Conservancy Marks.

Response: Registrant objects to the Request, which seeks documents relating to "The Software Conservancy Marks," not the trademark in suit, on the basis that it seeks documents that are not relevant to the subject matter of the suit and further objects to the extent it seeks documents that are privileged.

DOCUMENT REQUEST NO. 7:

All documents that report, describe, summarize, analyze, discuss or comment on the use of "Conservancy" and the acronym "SFC" to refer to Software Freedom Conservancy.

Response: Registrant objects to the Request, which seeks documents relating to the use of the word "Conservancy" and the initialism "SFC" on the basis that it seeks

documents that are not relevant to the subject matter of the suit and further objects to the extent it seeks documents that are privileged.

DOCUMENT REQUEST NO. 8:

All documents that report, describe, summarize, analyze, discuss or comment on Registrant's decision not to file an application with the USPTO to register the acronym "SFC" in connection with Registrant's goods and services.

Response: Registrant objects to the Request, which seeks documents relating to the trademark registration of "SFC," not the trademark in suit, on the basis that it seeks documents that are not relevant to the subject matter of the suit and further objects to the extent it seeks documents that are privileged.

DOCUMENT REQUEST NO. 9:

All documents that report, describe, summarize, analyze, discuss or comment on efforts by Software Freedom Conservancy to police the SFC Mark and the Conservancy Mark.

Response: Registrant objects to the extent the Request asks for the production of documents that are privileged or not relevant to the subject matter of the suit. Subject to such objection and without waiving same, Registrant will produce relevant, non-privileged documents that are responsive to this request on a rolling basis as they become available.

DOCUMENT REQUEST NO. 10:

Specimens of, or documents that show, each and every product and service offered, or intended to be offered, under Registrant's Mark, or any marks which comprise or incorporate Registrant's Mark alone or in combination with other elements.

Response: Registrant objects to the extent the Request is overly burdensome, asks for the production of documents that are not relevant to the subject matter of the suit, that are a matter of public record, or that are equally available to Petitioner. Subject to such objection and without waiving same, Registrant will produce relevant, non-privileged documents that are responsive to this request on a rolling basis as they become available.

DOCUMENT REQUEST NO. 11:

All documents that report, describe, summarize, analyze, discuss or comment on the channels through which Registrant advertises and promotes Registrant's products or services under Registrant's Mark, or intends to advertise and promote products or services under Registrant's Mark.

Response: Registrant objects to the extent the Request is overly burdensome, asks for the production of documents that are not relevant to the subject matter of the suit, that are a matter of public record, or that are equally available to Petitioner. Subject to such objection and without waiving same, Registrant will produce relevant, non-privileged documents that are responsive to this request on a rolling basis as they become available.

DOCUMENT REQUEST NO. 12:

One copy of each advertising, marketing, and promotional material for products or services under Registrant's Mark, whether used or not, including, without limitation, print advertisements, web pages, catalogs, mailers, circulars, brochures, press releases, letters, press kits, web-based advertisements, emails, texts, promotional posts on social media sites, and transcripts and recordings of audio and video advertisements.

Response: Registrant objects to the extent the Request is overly burdensome, asks for the production of documents that are not relevant to the subject matter of the suit, that are a matter of public record, or that are equally available to Petitioner. Subject to such objection and without waiving same, Registrant will produce relevant, non-privileged documents that are responsive to this request on a rolling basis as they become available.

DOCUMENT REQUEST NO. 13:

All documents identifying the annual advertising and promotional expenditures in the United States for all products and services offered under Registrant's Mark.

Response: Registrant objects to the extent the Request is overly burdensome or asks for the production of documents that are not relevant to the subject matter of the suit. Subject to such objection and without waiving same, Registrant will produce relevant, non-privileged documents that are responsive to this request on a rolling basis as they become available.

DOCUMENT REQUEST NO. 14:

All documents sufficient to identify all trade fairs, trade shows, trade exhibitions, and trade expos that Registrant attends.

Response: Registrant objects to the extent the Request is overly burdensome or asks for the production of documents that are not relevant to the subject matter of the suit. Subject to such objection and without waiving same, Registrant will produce relevant, non-privileged documents that are responsive to this request on a rolling basis as they become available.

DOCUMENT REQUEST NO. 15:

All documents that report, describe, summarize, analyze, discuss or comment on invitations or requests for Software Freedom Conservancy to speak at, lead, give a presentation at or exhibit at any meetings, conferences, seminars or any similar types of events.

Response: Registrant objects to the extent the Request is overly burdensome or asks for the production of documents that are not relevant to the subject matter of the suit. Subject to such objection and without waiving same, Registrant will produce relevant, non-privileged documents that are responsive to this request on a rolling basis as they become available.

DOCUMENT REQUEST NO. 16:

All documents that report, describe, summarize, analyze, discuss or comment on any instance in which Registrant noted or objected to any third-party use or registration of a name or mark believed by Registrant to be confusingly similar to or infringing on Registrant's Mark.

Response: Registrant objects to the extent the Request asks for the production of documents that are privileged or not relevant to the subject matter of the suit. Subject to such objection and without waiving same, Registrant will produce relevant, non-privileged documents that are responsive to this request on a rolling basis as they become available.

DOCUMENT REQUEST NO. 17:

All documents that report, describe, summarize, analyze, discuss or comment on confusion between Software Freedom Conservancy and any of its products and services and Software

Freedom Law Center and any of its products and services, including, but not limited to, any internal records of written or oral communication between or among SFC employees.

Response: Registrant objects to the extent the Request is vague because it equates “confusion” about goods and services without any specific trademark as a breach of Section 2(d) of the Lanham Act, and because it asks for the production of documents that are privileged, not relevant to the subject matter of the suit, or are equally available to Petitioner. Subject to such objection and without waiving same, Registrant will produce relevant, non-privileged documents that are responsive to this request on a rolling basis as they become available.

DOCUMENT REQUEST NO. 18:

All documents that report, describe, summarize, analyze, discuss or comment on comparisons between Software Freedom Conservancy and any of its products or services and Software Freedom Law Center and any of its products or services.

Response: Registrant objects to the extent the Request asks for the production of documents that are privileged, not relevant to the subject matter of the suit, or are equally available to Petitioner. Subject to such objection and without waiving same, Registrant will produce relevant, non-privileged documents that are responsive to this request on a rolling basis as they become available.

DOCUMENT REQUEST NO. 19:

All documents that report, describe, summarize, analyze, discuss or comment on Software Freedom Law Center, the services of Software Freedom Law Center, Eben Moglen or Mishi Choudhary.

Response: Registrant objects to the Request, which seeks documents relating to any mention of the Software Freedom Law Center, Eben Moglen or Mishi Choudhary, on the basis that it is overly broad, overly burdensome, seeks documents that are not relevant to the subject matter of the suit and further objects to the extent it seeks documents that are privileged.

DOCUMENT REQUEST NO. 20:

All documents that report, describe, summarize, analyze, discuss or comment on communications directed to, transmitted to, addressed to, or intended for Software Freedom Law Center, Eben Moglen or Mishi Choudhary, but received by Software Freedom Conservancy.

Response: Registrant objects to the extent the Request asks for the production of documents that are privileged, not relevant to the subject matter of the suit, or are equally available to Petitioner. Subject to such objection and without waiving same, Registrant will produce relevant, non-privileged documents that are responsive to this request on a rolling basis as they become available.

DOCUMENT REQUEST NO. 21:

All corporate documents of Registrant, including certificate of incorporation, bylaws, rules, regulations, procedures, and any proposed amendments thereto.

Response: Registrant objects to the extent the Request is overly burdensome, asks for the production of documents that are not relevant to the subject matter of the suit, that are a matter of public record, or that are equally available to Petitioner. Subject to such objection and without waiving same, responsive documents can be found at <https://sfconservancy.org/about/filings/>.

DOCUMENT REQUEST NO. 22:

All documents that report, describe, summarize, analyze, discuss or comment on Patrick McHardy.

Response: Registrant objects to the Request on the basis that it seeks documents that are not relevant to the subject matter of the suit and further objects to the extent it seeks documents that are privileged.

DOCUMENT REQUEST NO. 23:

All documents that report, describe, summarize, analyze, discuss or comment on financial transactions to and/or from Patrick McHardy and any companies partially or completely controlled by him.

Response: Registrant objects to the Request on the basis that it seeks documents that are not relevant to the subject matter of the suit and further objects to the extent it seeks documents that are privileged.

DOCUMENT REQUEST NO. 24:

All documents that report, describe, summarize, analyze, discuss or comment on Christoph Hellwig.

Response: Registrant objects to the Request on the basis that it seeks documents that are not relevant to the subject matter of the suit and further objects to the extent it seeks documents that are privileged.

DOCUMENT REQUEST NO. 25:

All minutes, recordings, summaries, or reports of meetings, whether formal or informal, of the meetings of Registrant's board of directors.

Response: Registrant objects to the Request, which seeks all documents relating to the Registrant's Board of Directors, on the basis that it is overly broad, overly burdensome, and seeks documents that are not relevant to the subject matter of the suit or that are privileged.

DOCUMENT REQUEST NO. 26:

All documents that report, describe, summarize, analyze, discuss or comment on the decision of Software Freedom Conservancy to offer legal services or legal advice.

Response: Registrant objects to the extent the Request asks for the production of documents that are privileged, not relevant to the subject matter of the suit, or that are equally available to Petitioner. Further, Registrant construes the term "legal services" and "legal advice" as services Registrant provides to its internal clients, not to the public. If Petitioner's intended meaning of "legal services" or "legal advice" is to the public, Registrant has no responsive documents because it does not perform services of that kind. Subject to such objection and clarification and without waiving same, Registrant will produce relevant, non-privileged documents that are responsive to this request on a rolling basis as they become available.

DOCUMENT REQUEST NO. 27:

All documents that report, describe, summarize, analyze, discuss, comment on, advertise or promote the provision of legal services or legal advice by Software Freedom Conservancy.

Response: Registrant construes the term "legal services" and "legal advice" as services Registrant provides to its internal clients, not to the public. Registrant objects to the extent the Request is overly broad, overly burdensome, asks for the production of documents that are privileged or not relevant to the subject matter of the suit, that are a matter of public record, or that are equally available to Petitioner.

DOCUMENT REQUEST NO. 28:

A copy of each version of Registrant's website that has been published at the domain sfconservancy.org.

Response: Registrant objects to the extent the Request is overly burdensome, asks for the production of documents that are not relevant to the subject matter of the suit, that are a matter of public record, or that are equally available to Petitioner. Subject to such objection and without waiving same, responsive documents can be found at <https://k.sfconservancy.org/website>.

DOCUMENT REQUEST NO. 29:

All documents referring to or reflecting all insurance policies and insurance coverage which Software Freedom Conservancy has or has had, including malpractice and directors and officers liability insurance.

Response: Registrant objects to the Request on the basis that it seeks documents that are not relevant to the subject matter of the suit.

DOCUMENT REQUEST NO. 30:

All documents filed by Registrant with the Charities Bureau of the New York State Office of the Attorney General.

Response: Registrant objects to the extent the Request is overly broad, overly burdensome, asks for the production of documents that are not relevant to the subject matter of the suit, that are a matter of public record, or that are equally available to Petitioner. Subject to such objection and without waiving same, responsive documents can be found at <https://www.charitiesnys.com/> and <https://sfconservancy.org/about/filings/>.

DOCUMENT REQUEST NO. 31:

All of Registrant's financial records up until September 22, 2017.

Response: Registrant objects to the extent the Request is overly broad, overly burdensome, asks for the production of documents that are not relevant to the subject matter of the suit, that are a matter of public record, or that are equally available to Petitioner. Subject to such objection and without waiving same, responsive documents can be found at <https://sfconservancy.org/about/filings/>.

DOCUMENT REQUEST NO. 32:

All documents that report, describe, summarize, analyze, discuss or comment on Registrant's recruitment of Anthony K. Sebro, Jr. to the post of General Counsel and to the Registrant's Board of Directors.

Response: Registrant objects to the Request on the basis that it seeks documents that are not relevant to the subject matter of the suit and further objects to the extent it seeks documents that are privileged.

DOCUMENT REQUEST NO. 33:

All documents that report, describe, summarize, analyze, discuss or comment on the review of the "trademark portfolio of Conservancy" referred to in paragraph 20 of Declaration of Bradley M. Kuhn in Support of Respondent's Motion for Summary Judgment on its Affirmative Defenses.

Response: Registrant objects to the extent the Request asks for the production of documents that are privileged or not relevant to the subject matter of the suit. Subject to such objection and without waiving same, Registrant will produce relevant, non-privileged documents that are responsive to this request on a rolling basis as they become available.

DOCUMENT REQUEST NO. 34:

All documents that report, describe, summarize, analyze, discuss or comment on the fraud in the procurement of Registrant's Mark, including all documents to and from Registrant's attorney.

Response: Registrant objects to the Request to the extent it states an unproven legal conclusion. Registrant further objects to the Request on the basis that it seeks documents that are not relevant to the subject matter of the suit.

DOCUMENT REQUEST NO. 35:

All documents tending to show that there is no likelihood of confusion between the marks at issue.

Response: Registrant objects to the extent the Request is overly burdensome and asks for the production of documents that are privileged. Subject to such objection and without waiving same, Registrant will produce relevant, non-privileged

documents that are responsive to this request on a rolling basis as they become available.

DOCUMENT REQUEST NO. 36:

All documents tending to show that Software Freedom Conservancy had the exclusive right to use the SFC Mark as of any date prior to the date Registrant filed its application for the SFC Mark with the USPTO.

Response: Registrant objects to the extent the Request is overly burdensome when requesting “all” documents or asks for the production of documents that are privileged. Subject to such objection and without waiving same, Registrant will produce relevant, non-privileged documents that are responsive to this request on a rolling basis as they become available.

DOCUMENT REQUEST NO. 37:

All documents tending to prove Registrant’s affirmative defenses.

Response: Registrant objects to the extent the Request is for documents that are equally available to Petitioner. Subject to such objection and without waiving same, Registrant will produce relevant documents that are responsive to this request on a rolling basis as they become available.

DOCUMENT REQUEST NO. 38:

All documents concerning any social media account or social media username owned on behalf of SFC.

Response: Registrant objects to the extent the Request is overly broad, overly burdensome, asks for the production of documents that are not relevant to the subject matter of the suit, that are a matter of public record, or that are equally available to Petitioner. Subject to such objection and without waiving same, Registrant will produce relevant, non-privileged documents that are responsive to this request on a rolling basis as they become available.

DOCUMENT REQUEST NO. 39:

All documents that report, describe, summarize, analyze, discuss or comment on any IRC channel owned or operated on behalf of SFC, including, but not limited to, logs.

Response: Registrant objects to the extent the Request is overly broad, overly burdensome, asks for the production of documents that are not relevant to the subject matter of the suit or that are privileged, that are a matter of public record, or that are equally available to Petitioner. Additionally, it is Registrant's policy not to retain IRC logs.

DOCUMENT REQUEST NO. 40:

All documents that report, describe, summarize, analyze, discuss or comment on any IRC channel owned or operated on behalf of SFLC, including, but not limited to, logs.

Response: Registrant objects to the extent the Request is overly broad, overly burdensome, asks for the production of documents that are not relevant to the subject matter of the suit or that are privileged, that are a matter of public record, or that are equally available to Petitioner. Additionally, it is Registrant's policy not to retain IRC logs.

DOCUMENT REQUEST NO. 41:

One copy of each podcast featuring Bradley Kuhn or Karen Sandler, whether publicly available or not, including, without limitation, all episodes of “Free as in Freedom” and “The Software Freedom Law Show.”

Response: Registrant objects to the extent the Request is overly broad, overly burdensome, asks for the production of documents that are not relevant to the subject matter of the suit, that are a matter of public record, or that are equally available to Petitioner. Subject to such objection and without waiving same, responsive documents can be found on Petitioner’s own website or on <http://faif.us/>.

DOCUMENT REQUEST NO. 42:

All documents that report, describe, summarize, analyze, discuss, comment or are transcriptions of all podcasts featuring Bradley Kuhn or Karen Sandler, whether publicly available or not, including, without limitation, all episodes of “Free as in Freedom” and “The Software Freedom Law Show.”

Response: Registrant objects to the extent the Request is overly broad, overly burdensome, asks for the production of documents that are not relevant to the subject matter of the suit, that are a matter of public record, or that are equally available to Petitioner. Subject to such objection and without waiving same, responsive documents can be found on Petitioner’s own website or on <http://faif.us/>.

DOCUMENT REQUEST NO. 43:

All documents that report, describe, summarize, analyze, discuss or comment on the termination of employment of Bradley Kuhn at SFLC.

Response: Registrant objects to the extent the Request asks for the production of documents that are privileged, not relevant to the subject matter of the suit, or are equally available to Petitioner.

DOCUMENT REQUEST NO. 44:

All documents that report, describe, summarize, analyze, discuss or comment on the termination of employment of Karen Sandler at SFLC.

Response: Registrant objects to the extent the Request asks for the production of documents that are privileged, not relevant to the subject matter of the suit, or are equally available to Petitioner.

DOCUMENT REQUEST NO. 45:

All documents generated from, to, or concerning copyleft.org responsive to any of the above requests.

Response: Registrant objects to the Request, which seeks documents relating to a website for copyright matters, not the trademark in suit, on the basis that it seeks documents that are not relevant to the subject matter of the suit.

DOCUMENT REQUEST NO. 46:

All documents generated by/from karen@punkrocklawyer.com responsive to any of the above requests.

Response: Registrant has produced or will produce relevant, non-privileged documents that are responsive to this request on a rolling basis as they become available.

DOCUMENT REQUEST NO. 47:

All documents generated by/from bkuhn@ebb.org responsive to any of the above requests.

Response: Registrant has produced or will produce relevant, non-privileged documents that are responsive to this request on a rolling basis as they become available.

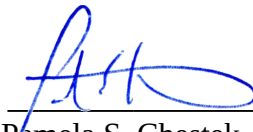
DOCUMENT REQUEST NO. 48:

All documents posted to Twitter.com, Facebook.com, any other social networking platform responsive to any of the above requests.

Response: Registrant has produced or will produce relevant, non-privileged documents that are responsive to this request on a rolling basis as they become available.

Respectfully submitted,

Dated: May 30, 2018

By: 

Pamela S. Chestek
Chestek Legal
PO Box 2492
Raleigh, NC 27602
Attorney for Registrant
pamela@chesteklegal.com

Certificate of Service

I hereby certify that a true and complete copy of the foregoing Responses To Petitioner's First Set Of Requests For Documents And Things has been served on Software Freedom Law Center by mailing said copy on May 30, 2018, via electronic mail to:

Daniel Byrnes
Software Freedom Law Center
435 West 116th Street
New York, NY 10027

Email: dbyrnes@softwarefreedom.org

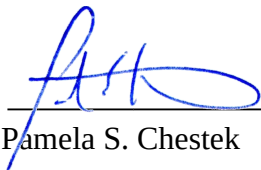
By:  _____
Pamela S. Chestek

EXHIBIT C



June 15th, 2018

Pamela S. Chestek
Chestek Legal
PO Box 2492
Raleigh, NC 27602
pamela@chesteklegal.com

SENT VIA EMAIL

Re: **SOFTWARE FREEDOM CONSERVANCY (Cancellation No. 92066968)**

Dear Ms. Chestek:

I have received Conservancy's "Responses to Petitioner's First Set of Requests for Documents and Things" and find it completely inadequate. There are no valid objections raised in it, and Conservancy fails to respond in the manner required by the FRCP.

Specifically, Conservancy's responses make objections on grounds of that the requests are "not relevant to the subject matter of the suit," "overly broad" and/or "overly burdensome" without providing the specific reasons for objecting, and do not indicate whether or not material is being withheld. FRCP 34(b)(2)(B) and (C) require that responses to document requests "state with specificity the grounds for objecting to the request, including the reasons" and also that "objection must state whether any responsive materials are being withheld on the basis of that objection."

Conservancy has also promised in numerous responses to produce documents "on a rolling basis as they become available." This is unacceptable. FRCP 34(b)(2)(B) requires that "production must be completed no later than the time for inspection specified in the request or another reasonable time specified in the response."

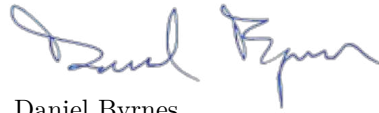
All of SFLC's requests are relevant to matters that will be dealt with at trial, and are tailored to produce materials that will document Conservancy's knowledge of actual confusion between the marks, Conservancy's efforts to intentionally cause confusion between the marks, and false statements made to the USPTO by Conservancy with the intention to commit fraud.

Responses were due on May 30, 2018, and if Conservancy has documents in its possession responsive to a request that it is not producing then it must provide the reasons. If there are no materials responsive to these requests in its possession then it must state so. As a publicly regulated charitable organization whose activities involve overseeing the assets and affairs of dozens of software projects, Conservancy cannot seriously claim that it is overly burdensome to search through its own email and other documents when required.

SFLC demands that Conservancy provide the materials requested and a proper, full, and complete response that is in accord with the FRCP within 15 days from today. If your client continues with these frivolous and dilatory tactics and does not provide the materials requested then a motion to compel will be filed.

In the meantime, please respond immediately to Document Request 34 for all materials related to your advice to Conservancy regarding fraud, as attorney-client privilege regarding this topic was waived by Bradley Kuhn in his blog post on December 22, 2017. We can then take your deposition while we sort out our differences regarding the rest of Conservancy's response. Please feel free to call me if you would like to discuss further.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daniel Byrnes", with a stylized, cursive script.

Daniel Byrnes

EXHIBIT D

Subject: Re: Response to Rule 34 request
From: Daniel Byrnes <dbyrnes@softwarefreedom.org>
Date: 06/22/2018 04:47 PM
To: Pamela Chestek <pamela@chesteklegal.com>

Dear Pam,

You seem to have missed my previous message, which does not bear on whatever you've sent:

You have exhausted our patience. Every document in our Rule 34 Request is relevant to either:

- 1) your client's deliberate attempts to create confusion between Conservancy and the Software Freedom Law Center;
- 2) your client's fraudulent intent in applying for its pretended mark, or;
- 3) the unlawful, unauthorized practice of law in violation of your client's incorporation, which nullifies its pretended trademark and subjects your client and its directors to personal liability.

Your effort to obstruct discovery---given your client's waiver of attorney-client privilege as to fraud---places you at personal risk. We will be taking your sworn deposition shortly. If you prefer that to happen in a federal lawsuit rather than in this TTAB proceeding, we will oblige. Otherwise, as required by the Federal Rules of Civil Procedure, send us a proper Response along with all of the documents we have requested immediately.

We require the digital signatures on the documents produced for authentication; the encryption we request is for your client's protection, not ours. Bradley Kuhn and Karen Sandler trained under Eben and they know precisely how this process and its technical details work. The legal obligation of production is theirs, not yours.

Best,
Daniel

On 06/22/2018 03:39 PM, Pamela Chestek wrote:

Dear Daniel,

I received notice that the DVD with the documents was delivered to your address of record. Please let me know when you have had a chance to review them and are ready for a meet and confer.

Best regards,

Pam

Pamela S. Chestek
Chestek Legal
PO Box 2492
Raleigh, NC 27602
919-800-8033
pamela@chesteklegal.com
www.chesteklegal.com

On 6/22/2018 3:29 PM, Daniel Byrnes wrote:

Dear Pam,

You have exhausted our patience. Every document in our Rule 34 Request is relevant to either:

- 1) your client's deliberate attempts to create confusion between Conservancy and the Software Freedom Law Center;
- 2) your client's fraudulent intent in applying for its pretended mark, or;
- 3) the unlawful, unauthorized practice of law in violation of your client's incorporation, which nullifies its pretended trademark and subjects your client and its directors to personal liability.

Your effort to obstruct discovery---given your client's waiver of attorney-client privilege as to fraud---places you at personal risk. We will be taking your sworn deposition shortly. If you prefer that to happen in a federal lawsuit rather than in this TTAB proceeding, we will oblige. Otherwise, as required by the Federal Rules of Civil Procedure, send us a proper Response along with all of the documents we have requested immediately.

We require the digital signatures on the documents produced for authentication; the encryption we request is for your client's protection, not ours. Bradley Kuhn and Karen Sandler trained under Eben and they know precisely how this process and its technical details work. The legal obligation of production is theirs, not yours.

Best,
Daniel

On 06/19/2018 08:38 AM, Pamela Chestek wrote:

Dear Daniel,

I am taking the time to respond to you now despite my personal situation to show you how seriously I take your concerns. To summarize the sequence of events, I provided you with the written response on the deadline and asked that day how you would like me to send the documents, suggesting I could mail a USB. I sent a reminder email the following day after I did not hear back from you, advising you that there were over 1200 pages ready for your review. I did not get any response whatsoever for 15 days. A delay of a few more days because I am traveling attending a funeral for a family member should therefore not be a problem, given the lack of any interest on your part for more than two weeks.

As to the substance of the production, you have overstated the case. There are only 18 requests for which I said we would not be producing documents. The remainder are not altogether objectionable and documents are being provided, as the written responses indicate. The ones for which we are not producing documents are clearly outside the scope of this opposition, and I have given the reason in the responses. I reiterate, once you have had a chance to review the production I will be happy to meet and confer to discuss the scope of all of your requests, both for the requests for which we are providing documents and those that we are not, hear your explanation about why you believe that the information is relevant, and explain why I found them objectionable, after which we can perhaps reach an accommodation of both parties' interests.

As to the encryption, I do not even know where to begin. While I'm familiar with encrypting email messages -- which my mail client does for

me automatically -- I do not know how to prepare a file for download on a file-sharing site with encryption. My whole point, which I raised with you initially and which you are just now responding to -- is that the discovery documents are so voluminous that I could not send them in email, encrypted or otherwise. You've made it clear that you don't want them unencrypted on a file-sharing site, so the only option I am left with is physical media, which in my experience is how voluminous documents are typically produced. As I said, I will be sending you a CD as soon as I can.

Best regards,

Pamela S. Chestek
Chestek Legal
PO Box 2492
Raleigh, NC 27602
+1 919-800-8033
pamela@chesteklegal.com
www.chesteklegal.com

On 06/18/2018 04:53 PM, Daniel Byrnes wrote:

Hi Pam,

You have frivolously objected to 47 of 48 requests we served, so it should not be at all surprising that we were able to reach conclusions about the sufficiency of Conservancy's Response.

Contrary to your recollection, the Board did not dismiss our motion to amend the petition to add fraud with prejudice. Had they done so, we would already have initiated a fraud action in federal district court and you would have been served with the complaint. On the contrary, the Board acknowledged that evidence of fraud could be found in discovery. "Respondent retains the option to replead the fraud claim if a sound basis for the claim is discovered during discovery." (13 TTABVUE 5). SFLC fully intends to avail itself of the Board's decision and take discovery related to fraud. If you continue your frivolous and dilatory obstruction of that activity, you will face sanctions before the Board, and you will succeed in subjecting your client to additional expensive and damaging litigation.

Regarding the documents Conservancy is producing: once the file is encrypted to me there is no issue with placing it on a file sharing service or any other public-facing server where I can obtain it. Mailing a single copy of a self-burned CD is grossly inadequate as a means of producing documents for which authentication is of the essence.

Your client's obligation of immediate production is not affected by your personal schedule. Your efforts at delay and obstruction must cease. We require immediate compliance with the Federal Rules of Civil Procedure.

Best,
Daniel

On 06/18/2018 08:39 AM, Pamela Chestek wrote:

Dear Daniel,

Thank you for your email. Your letter is noted. I find it surprising that you could reach conclusions about the sufficiency of the production

when you haven't yet seen it. Once you do, I will be happy to have a meet and confer with you to go over what documents you believe exist and are responsive but that we haven't provided, and to discuss our objections.

I will make one comment now, though. I'll remind you that the Board dismissed with prejudice your motion to amend the petition to add fraud. We therefore will not be producing any documents in response to any request relating to fraud since the Board's decision made the requests irrelevant.

I gather that you do not trust the security of a file sharing site. I will therefore mail you a CD with the documents. I am currently out of town at a funeral, so I won't be able to get it mailed out until Thursday.

Pam

Pamela S. Chestek
Chestek Legal
PO Box 2492
Raleigh, NC 27602
+1 919-800-8033
pamela@chesteklegal.com
www.chesteklegal.com

On 06/15/2018 04:32 PM, Daniel Byrnes wrote:

Hi Pam,

Please see the attached regarding Conservancy's Response. Regarding your question as to how the documents Conservancy has produced should be provided, I have attached an empty discovery production container as an example. Place the documents in the subdirectories by request number, and then recompress each subdirectory to individual .tgz files, and generate a detached OpenPGP digital signature ("gpg --detach-sign") for each directory using counsel's key. Place the privilege list and destroyed list (which should also be digitally signed) and the certificates in the top level directory, and compress the container to tgz. Encrypt to me using my public key (C2FC 2054 ED7A 02A1 D494 31D1 E77B 0381 D0A8 5E1B) and then place on a server where I can download it.

Best,
Daniel

On 05/31/2018 05:03 PM, Pamela Chestek wrote:

Daniel,

Do you want the documents? Perhaps my email wasn't clear; there are 1200 pages that are not confidential or confidential, so I am waiting to hear how you would like me to deliver them to you. I can send a USB, or if you trust a file share service I can do that. It's just too much to email.

Pam

Pamela S. Chestek
Chestek Legal
PO Box 2492
Raleigh, NC 27602
919-800-8033
pamela@chesteklegal.com

www.chesteklegal.com

On 5/30/2018 9:29 PM, Pamela Chestek wrote:

Dear Daniel,

Here is Conservancy's Response to SFLC's Request for Production of Documents. I cannot send the documents by email, the files are too large. How would you like me to send them? I can put them on a USB and overnight them to you, will that work?

I will not be including any Confidential - Attorneys' Eyes Only documents. Conservancy will not agree that SFLC's in house counsel can have access to those documents. The Board rules are clear that the receiving party must hire an outside lawyer to review those documents.

Let me know about how and where you want me to send the documents.

Pam

--

Daniel Byrnes, Esq.
Counsel
Software Freedom Law Center
+1-212-461-1906
dbyrnes@softwarefreedom.org

EXHIBIT E



July 16th, 2018

1995 Broadway, 17th Floor
New York, NY 10023-5882
tel +1-212-461-1900
www.softwarefreedom.org

Pamela S. Chestek
Chestek Legal
PO Box 2492
Raleigh, NC 27602
pamela@chesteklegal.com

SENT VIA EMAIL

Re: **SOFTWARE FREEDOM CONSERVANCY (Cancellation No. 92066968)**

Dear Ms. Chestek:

As I have already detailed in my letter of June 15, 2018 and in my follow-up emails of June 18th and June 22nd, your client's Response to Petitioner's First Set of Requests for Documents and Things was completely inadequate. I gave you 15 days from the date of my letter to provide a proper response in compliance with the FRCP. I also brought to your attention the fact that your client had waived attorney-client privilege related to fraud and demanded you respond to our request for such materials immediately. You have ignored these deadlines.

On June 15th, as you had requested, I emailed you with detailed instructions on how the materials your client was producing should be provided, which you again chose to ignore. When I received what your client chose to provide in the way of discovery documents on June 22nd, it came as little surprise that it amounted to nothing more than another attempt to obstruct discovery. This obstructive behavior includes, among many other examples, the facts that:

1. We agreed during the initial discovery conference that documents should be provided as they are maintained in the usual course of business, as is required by the FRCP. Inexplicably, emails were provided as PDF documents, making it difficult to sort and search through them. For example, a single email chain that your client provided was reformatted to take up 460 pages of a larger PDF, with the majority of those pages containing no more than a single line of text on each page, making it impossible to make sense of.
2. Rather than provide documents responsive to each request in a separate folder as requested, you sent us a total of 4 separate PDFs with no table of contents, index or any other information identifying the documents contained in them. To further complicate their analysis, each PDF contained documents in response to some of the same requests that were provided in the other PDFs, necessitating recompiling their contents in order to obtain the full set of documents being produced in response to each request. For example, you provided documents in response to Document Request 20 spread out across 3 of the 4 PDFs that you sent.
3. You have completely ignored our request to provide documents in a manner that preserves the chain of custody and will ensure their authentication and protect their security. Instead you provided a unsigned, unauthenticated, unencrypted CD with no description of the contents or how, when or by whom it was collected.
4. There is no log of destroyed or lost documents, making it impossible to determine what responsive documents are no longer in your client's possession.

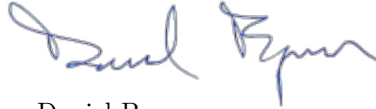
5. While your client did provide a privilege log, they neglected to provide a description of the documents that were included in it, making it impossible to determine whether or not privilege applies.
6. You made objections to numerous requests on the basis that they “are a matter of public record” or “equally available to Petitioner.” Yet for certain requests you had no problem producing for Petitioner PDFs of pages from Petitioner’s own website and PDFs of emails from Petitioner, evidencing the ingenuousness of your objections.
7. Your client provided nothing in response to Document Request No. 19 which requested documents relating to SFLC, its services and/or its principals, yet received nothing in response. The import and relevance of these documents to this proceeding are obvious.
8. Your client pled in its Answer that its then General Counsel and now Director Anthony K. Sebro swore to statements in the registration for the trademark in controversy that were false. However, nothing was provided in response to our Document Request No. 32 asking for “All documents that report, describe, summarize, analyze, discuss or comment on Registrant’s recruitment of Anthony K. Sebro, Jr. to the post of General Counsel and to the Registrant’s Board of Directors.” The requested documents are clearly relevant to the validity registration of the trademark in controversy and must be produced.
9. We have also asked for documents relating to the meetings of Registrant’s board of directors in Document Request No. 25. Despite objecting Petitioner’s request “on the basis that it is overly broad, overly burdensome, and seeks documents that are not relevant to the subject matter of the suit or that are privileged” your client nonetheless managed to sort through its records to select the minutes of 2 board meetings (from 2009 and 2011), and 8 emails (from 2010 and 2011) discussing board meetings that it apparently felt would portray it in a favorable light. However, all responsive documents must be produced. As your client surely realizes, selectively choosing to produce a minuscule proportion of available documents frustrates the very purpose of discovery and is simply unacceptable.
10. Petitioner also requested documents concerning the correspondence and transactions of specific individuals with your client in Document Requests No.s 22-24 which your client objected to on the basis that the requested documents are “not relevant to the subject matter of the suit” and/or are privileged. On the contrary, because such correspondence resulted from the parties confusing your client with Petitioner and/or occurred in order to receive services from your client that it could not legally provide, they are of paramount relevance to the legitimacy of the trademark at issue.

Your refusal to provide a response and documents in compliance with the FRCP is damaging to SFLC, as is your failure to provide what documents you did decide you would produce in the manner requested by Petitioner and required by the FRCP. Your client has not produced all of the documents in its possession that SFLC has requested, and has refused to indicate which responsive documents it is holding back and for what specific reasons. Moreover you have ignored Petitioner’s instructions on the format in which to provide documents and gone to the trouble of converting all emails, which are the bulk of the type of documents which your client produced, into PDFs in an effort evidently calculated to frustrate and delay Petitioner’s analysis of their contents. Your clients refusal to properly and fully produce the requested documents can only result in extending the period of discovery, increasing the number of interrogatories, request for admission and depositions that will be needed, thereby increasing Petitioner’s costs.

This pattern of delay and obstruction interferes with SFLC’s rights to obtain discovery

under the FRCP and the TTAB rules. This can only result in sanctions before the Board, which will be sought if you do not immediately and fully comply with SFLC's request for documents. Please feel free to call me if you would like to discuss further.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daniel Byrnes". The signature is fluid and cursive, with the first name "Daniel" and last name "Byrnes" clearly distinguishable.

Daniel Byrnes

EXHIBIT F

Subject: Re: Response to Rule 34 request
From: Daniel Byrnes <dbyrnes@softwarefreedom.org>
Date: 07/19/2018 06:58 PM
To: Pamela Chestek <pamela@chesteklegal.com>

Pam,

Yes, I have been making complaints in writing for over a month now and I still have not received a proper Response to SFLC's first request for documents. Nor have I received the documents you are personally obligated to provide in response to Document Request 34. "Due course" has come and gone and these issues need to be resolved. I am available tomorrow afternoon to discuss.

Best,
Daniel

On 07/19/2018 10:02 AM, Pamela Chestek wrote:

Daniel,

You have made a number of complaints in writing. We will be responding in writing, after which we can schedule a call for the formal meet and confer. It will take me several days, though, before I can provide the written response.

Pam

Pamela S. Chestek
Chestek Legal
PO Box 2492
Raleigh, NC 27602
919-800-8033
pamela@chesteklegal.com
www.chesteklegal.com

On 7/18/2018 6:18 PM, Daniel Byrnes wrote:

Hi Pam,

When are you available for a call to resolve these issues?

Best,
Daniel

On 07/16/2018 07:49 PM, Pamela Chestek wrote:

HI Daniel,

Your letter is noted and Conservancy will respond in due course.

Pam

Pamela S. Chestek
Chestek Legal
PO Box 2492
Raleigh, NC 27602

919-800-8033
pamela@chesteklegal.com
www.chesteklegal.com

On 7/16/2018 6:04 PM, Daniel Byrnes wrote:

Hi Pam,

Please see the attached letter regarding Conservancy's Response and production of documents.

Best,
Daniel

--

Daniel Byrnes, Esq.
Counsel
Software Freedom Law Center
+1-212-461-1906
dbyrnes@softwarefreedom.org

EXHIBIT G

Subject: Re: Cancellation No. 92066968
From: Daniel Byrnes <dbyrnes@softwarefreedom.org>
Date: 07/23/2018 11:50 AM
To: "John L. Welch" <John.Welch@WolfGreenfield.com>
CC: Pamela Chestek <pamela@chesteklegal.com>

Mr. Welch,

Thank you for your acknowledgment. I did not mistake my sentiments as your own, nor was there reason for you to. It's fine to keep your cards close, but there's no reason to be coy about timelines.

Best,
Daniel

On 07/22/2018 09:54 AM, John L. Welch wrote:

Your note is acknowledged.

By the way, I did not say we would speak next week. Please refrain from putting words in my mouth.

Regards,

JLW

John L. Welch
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, MA 02210
direct: 617-646-8285

From: Daniel Byrnes <dbyrnes@softwarefreedom.org>
Sent: Friday, July 20, 2018 11:01 AM
To: Welch, John L.
Cc: Pamela Chestek (pamela@chesteklegal.com)
Subject: Re: Cancellation No. 92066968

Dear Mr Welch,

Thank you for your note. We hope there will be no further delay in resolving the discovery issues. I look forward to talking to you sometime next week.

Best,
Daniel

On 07/20/2018 10:07 AM, John L. Welch wrote:

Hello, Mr. Byrnes.

As you have seen, I have filed an appearance today in this cancellation proceeding, as co-counsel to Pam Chestek.

I will need some time to get up to speed on the issues in the case, and particularly the discovery matters at hand.

We will then respond in writing to your latest letter, and will then arrange for a telephone discussion in an attempt to amicably resolve any disputes.

Regards,

JLW

* *

John L. Welch

Counsel

* *

jwelch@wolfgreenfield.com <mailto:jwelch@wolfgreenfield.com>

direct dial: 617.646.8285

* *

[*cid:image003.jpg@01CDD2DA.57CF4F80*](#)

*Wolf, Greenfield & Sacks, P.C.
*600 Atlantic Avenue *|* Boston, MA 02210-2206
617.646.8000 *|* 617.646.8646 fax

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From: Welch, John L.
Sent: Friday, July 20, 2018 9:33 AM
To: 'dbyrnes@softwarefreedom.org' [<dbyrnes@softwarefreedom.org>](mailto:dbyrnes@softwarefreedom.org)
Cc: JohnWelch (jlwtrademarks@WolfGreenfield.com)
[<jlwtrademarks@WolfGreenfield.com>](mailto:jlwtrademarks@WolfGreenfield.com)
Subject: Cancellation No. 92066968

Dear Mr. Byrnes:

Please see attached Notice of Appearance, which will be filed with the TTAB this morning.

Regards,

JLW

* *

John L. Welch

Counsel

* *

jwelch@wolfgreenfield.com <mailto:jwelch@wolfgreenfield.com>>

direct dial: 617.646.8285

* *

[*cid:image003.jpg@01CDD2DA.57CF4F80*](#)

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* *

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--

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--

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+1-212-461-1906
dbyrnes@softwarefreedom.org

EXHIBIT H

August 13, 2018

**VIA EMAIL (dbyrnes@softwarefreedom.org)
& FIRST CLASS MAIL**

Daniel Byrnes, Esq.
Software Freedom Law Center
P.O. Box 250874
New York, New York 10025

Re: Software Freedom Law Center v. Software Freedom Conservancy
TTAB Cancellation No. 92066968
Our Ref. No. W0000.80101US00

Dear Mr. Byrnes:

We have carefully reviewed your letter of July 16, 2018, regarding Respondent's discovery responses. Contrary to your contentions, Respondent has made a good faith effort to fairly comply with Petitioner's requests. We have no doubt that Respondent's responses and its production of documents are adequate and proper, and we completely reject your assertion that Respondent is attempting to "obstruct discovery."

It may be helpful to begin by recognizing that the subject cancellation proceeding concerns only the issue of the registrability of a single mark, SOFTWARE FREEDOM CONSERVANCY, for the goods and services identified in the registration. It does not concern other goods or services. It does not concern the mark THE CONSERVANCY or the mark SFC. It does not concern issues regarding Respondent's employees, or its recruitment practices, or any other matter outside the narrow scope of this administrative proceeding.

Furthermore, we note that discovery in TTAB proceedings is bounded by the principle of proportionality. Under the Board's rules, a party may obtain relevant, nonprivileged matter, proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. As you surely know, discovery in Board proceedings is generally narrower than in court proceedings since the Board is empowered only to determine the right to registration of the mark at issue.

Daniel Byrnes, Esq.
August 13, 2018
Page 2

As a further brake on discovery, the TTAB rules limit the number of production requests that a party may serve to seventy-five, counting subparts. The concept of “subparts” is not limited to separately designated subparts, but encompasses each separate portion of a request that requires separate attention and response.

Turning to your letter, we flatly reject Petitioner’s contention that Respondent has waived the attorney-client privilege related to “fraud” or to any other issue. We also flatly reject your puzzling assertion that Respondent has admitted that Mr. Sebro “swore to statements in the registration for the trademark in controversy that were false.” Respondent made no such admission and you surely know it. In its Answer, Respondent merely confirmed that Mr. Sebro made the subjective statement called for in the trademark application; Mr. Sebro’s statement was not an assertion of objective fact and Respondent’s routine confirmation that Mr. Sebro made that statement had nothing to do with its truth or falsity.

As to the form in which the documents were produced, Petitioner should recognize that the Board is not bound by the definitions and instructions that a party includes with its discovery requests. In other words, a party may not unilaterally impose its own requirements on the other party as to how documents are to be produced. In this case, Respondent has provided copies of the responsive documents on a DVD, appropriately grouped and labeled so as to indicate the respective requests to which the documents pertain. That is normal practice in TTAB proceedings. It is inconceivable that Petitioner has been unable to access and review the documents that have been produced.

The rules state that copies of requested documents may be produced if organized and labeled to correspond to the categories in the request. That is what Respondent has done. There is no requirement that documents be provided in a manner that “preserves the chain of custody,” whatever that means. As to authentication of the documents produced, Rule 2.120(i) provides for that.

There is also no requirement in the Board rules that a party provide a “log of lost or destroyed” documents. Respondent maintains no such log and it is not required to create one. In any case, it is not aware of any lost or destroyed documents that are relevant to this proceeding..

As to the privilege log that Respondent provided, Respondent is willing to discuss this issue, although it believes that the log it provided is adequate.

As to your complaint about Respondent providing only some documents from the public record, are you suggesting that because Respondent supplied some public documents, it has to provide all? On its face, that contention makes no sense.

Daniel Byrnes, Esq.
August 13, 2018
Page 3

We reiterate that documents relating to the recruitment of individuals and/or their employment at the Conservancy are simply not relevant to the issues at hand.

Finally, may we point out that Petitioner's threats regarding sanctions and further discovery have no impact on Respondent, since Respondent is completely comfortable in its belief that it has responded properly and in good faith to Petitioner's requests. No saber-rattling by Petitioner will dissuade Respondent from protecting its interests while complying with Board procedure. Please also note that should Petitioner serve additional production requests, Respondent will object on the ground that the number of requests already served, counting subparts, exceeds the numerical limit of seventy-five.

Since Petitioner waited five years before challenging the subject registration, it is difficult to fathom how Petitioner can now complain about any minor delays in discovery. Moreover, three months remain in the discovery period in this proceeding, and Respondent's motion to amend its answer has not been decided. Perhaps you can explain how these minor delays (including Petitioner's own delays) are causing harm to Petitioner?

Very truly yours,

WOLF, GREENFIELD & SACKS, P.C.



John L. Welch

JLW/smo

cc: Pamela S. Chestek, Esq.

EXHIBIT I

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SFLC: Escalation Disguised as “Settlement Offer”

by Bradley M. Kuhn and Karen M. Sandler on December 22, 2017

Conservancy stands by our motion for summary judgment to dismiss Software Freedom Law Center (SFLC)'s petition to cancel our trademark. This remains the most resource-efficient way to dispense with SFLC's unwarranted attacks. We have received their latest escalation, disguised as a “peaceful settlement” offer. Instead of deescalating today, SFLC added inflammatory accusations against Conservancy and its employees. Obviously, we did not commit fraud; our legal counsel, Pam Chestek, has advised us that SFLC's fraud allegation is “unequivocally unfounded”. We will not let them further waste our time.

We cannot accept any settlement offer that includes a trademark license we don't need. Furthermore, any trademark license necessarily gives SFLC perpetual control over how we pursue our charitable mission. SFLC, our former law firm, helped us form and name our independent entity. Changing this arrangement now does not advance software freedom nor our mission. Our community remains best served by SFLC and Conservancy as independent entities.

Links to our previous blog posts on this matter: 1, 2

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Please email any comments on this entry to info@sfconservancy.org.

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